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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,856	07/25/2003	Joachim Grutzke	2001P16101WOUS	2645

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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/627,856

**Applicant(s)**

GRUTZKE ET AL.

**Examiner**

CARL D. PRICE

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/09/2006 (REC filed).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

**Request for Continued Examination under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **11/09/2006** has been entered.

**Response to Arguments**

Applicant's arguments with respect to claims **1-17** and **19-21** have been considered but are moot in view of the new ground(s) of rejection.

The indicated allowability of claim 13 is withdrawn in view of the newly applied reference(s) to **US001379091 (Farquhar)**. Rejections based on the newly cited reference(s) follow.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

In regard to claims **1-17** and **18-21**, in each of the following rejections of the claims over prior art the term(s) “cooking appliance” and “oven” have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In this case the preamble merely recites the intended use of a structure and the body of the claim does not depend on the preamble for completeness but, instead, the structural limitations are able to stand alone.

Also, in regard to claims 1-17 and 19-21, in each of the following rejections of the claims over prior art the term “cooking appliance” deemed to be merely a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). That is, the structural box or case of **US000646200 (Allen)** is capable of being used as a “cooking appliance”, at least in the manner broadly set forth in the claims, as for example, and a housing, or appliance, providing useful storage for cooking related articles such as for storing cooking utensils (e.g. - pots and pans), dry goods (e.g.- cakes, pies, breads, boxed foods, etc.) and can goods.

**Claims: Rejected under 35 U.S.C. 102(b)**

Claims **1-7, 9, 10, 15-17** and **19- 21** are rejected under 35 U.S.C. 102(b) as being anticipated by **US000646200 (Allen)** (of record).

**US000646200 (Allen)** shows and discloses an apparatus, comprising:

- a housing defining a useful space generally located directly above the bottom wall (not referenced);

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- a stowage space located generally in the area occupied by the door when in the stowed or retracted position (figure 3);
- a guide system for directing movement of the door including:
  - a fixed pivot axis (9) attached to the housing side wall (a) at a fixed location and received in a first guide track (8) which is integrally formed as a groove in and along the side edge of the door panel, and therefore mounted on the door, such that the door slides or translates about the fixed pivot (9);
  - a second guide track (2) formed as a groove integrally with and in the side wall of the housing, and therefore attached to or mounted on the housing, for receiving a guide element (3) fixed and attached to the side edge of the door, such that the second guide track guides the door, via movement of the guide element (3) therewith, along the second track (2) and into a stowed area or position of the of the housing interior.

The structural box or case of **US000646200 (Allen)** is capable of being used as a “cooking appliance”, at least in the manner broadly set forth in the claims, as for example, and a housing, or appliance, providing useful storage for cooking related articles such as for storing cooking utensils (e.g. - pots and pans), dry goods (e.g.- cakes, pies, breads, boxed foods, etc.) and can goods.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims rejected under 35 U.S.C. 103(a)**

Claims **1-17** and **19-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US000646200 (Allen)** (of record) in view of **US001379091 (Farquhar)** (of record).

**US000646200 (Allen)** shows and discloses the invention substantially as set forth in the claims with possible exception to, although not claimed as such, separate or individual and distinct track elements mounted on or attached to the various housing and door components forming the track and guide elements, a rocker latching mechanism holding the door in at least one position, and the door pivoting downward, that is wherein the stowage position is on the bottom of the housing and defined by a wall located intermediate the useful space and retracted door stowage space.

**US001379091 (Farquhar)** teaches, from applicants' same housing or casing field of endeavor, separate or individual and distinct track elements (26) mounted on or attached to the housing forming the track and guide elements, a spring biased rocker latching mechanism (16,28) holding the door in at least one position (i.e.- the closed position), and the door pivoting downward, that is wherein the stowage position is on the bottom of the housing and defined by a wall (24) located intermediate the useful space (4) and retracted door stowage space located herein below.

It is noted that the pivoting door mechanism of **US001379091 (Farquhar)** is generally of the type disclosed in **US000646200 (Allen)** and including:

- a guide system for directing movement of the door including:
  - a fixed pivot axis (16) attached to the housing side wall at a fixed location and received in a first guide track (18, 19) which is integrally formed as a groove in and along the side edge of the door panel, and therefore mounted on the door, such that the door slides or translates about the fixed pivot (16);
  - a second guide track (26) mounted on the housing, for receiving a guide element (25) fixed and attached to the side edge of the door, such that the second guide track guides the door, via movement of the guide element (25) therewith, along the second guide (26) and into a stowed area or position of the of the housing interior.

In regard to claims **1-17** and **19-21**, for the purpose of providing an alternate track or guide means, it would have been obvious to a person having ordinary skill in the art to modify

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the track or guide means of **US000646200 (Allen)** to be formed separate or individual and distinct elements mounted on or attached to the housing forming the track and guide elements, to provide the guide mechanism with a spring biased rocker latching mechanism holding the door in at least one position (i.e.- the closed position), and to orient the door to pivot downward, that is wherein the stowage position is on the bottom of the housing, each in view of the teaching of **US001379091 (Farquhar)**.

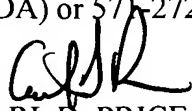
**Conclusion**

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Josiah Cocks can be reached on (571) 272-4874. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
CARL D. PRICE

Primary Examiner

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CP